S.B. CIVIL WRIT PETITION NO.5273/2004

Sushil Kumar Bihani

VS

Sugan Chand Chitlangia Charitable Trust & Ors.

DATE OF ORDER : 17.3.2005

HON'BLE MR.PRAKASH TATIA, J.

Mr.C.S.Kotwani, for the petitioner.
Mr.S.L.Jain, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 27.2.2003 (Annex.1) by which the petitioner's right to file written statement was closed by the trial court and trial court refused to condone the delay in filing the written statement by order dated 21st August, 2004 (Annex.4).

According to learned counsel for the petitioner, the trial court closed the right of the petitioner to file the written statement vide order dated 27.2.2003 thereupon the petitioner submitted an application under Section 148 CPC stating therein that the defendant signed the written statement and it was handed over to the person working with the advocate of the petitioner. The application is support

by the affidavit of the petitioner as well as the affidavit of the person to whom the written statement was handed over by the petitioner. According to petitioner, that person was sitting near the seat of the advocate of the petitioner but he could not give that written statement to the advocate of the petitioner.

It appears that the facts mentioned by the petitioner have not even been disputed by the non-petitioner in his reply, copy of which available on record as Annex.3. The trial court was right so far as recorded the contentions of the petitioner, but since the written statement has already been filed, therefore, this court deems it proper to set aside the order of the trial court dated 27.2.2003 on payment of cost of Rs.2,000/- The written statement is taken on record subject to payment of the cost. In case, the cost will not be paid or deposited in the court within a period of 15 days from today, the written statement shall not be treated as taken on record. The trial court is requested to decide the suit expeditiously as early as possible.

In view of the above, the writ petition of the petitioner is allowed.

(PRAKASH TATIA), J.

c.p.goyal/-